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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/535,186	03/27/2000	George McBride	CARDIOBEAT-1	3794
7590 08/12/2004				
Donald J. Lenkszus PC P O Box 3064 Carefree, AZ 85377		EXAMINER KIM, PAUL L		
		ART UNIT PAPER NUMBER 2857		

DATE MAILED: 08/12/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<p align="center"><b>Office Action Summary</b></p>	<b>Application No.</b> 09/535,186	<b>Applicant(s)</b> MCBRIDE ET AL.	
	<b>Examiner</b> Paul L Kim	<b>Art Unit</b> 2857	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 24 May 2004.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1 and 4-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 4-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 4-10, and 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown (US 5,307,263) in view of Brown et al (US 5,879,163).

With reference to claims 1, 4-7, Brown (US 5,307,263) teaches a medical testing method comprising the steps of: providing and coupling a test sensor to a subject (fig. 1, part 16), coupling the test sensors to an apparatus having access to a network (fig. 1, part 10), operating the apparatus to automatically obtain test measurement data from the test sensors (col. 10, lines 5-14), uploading the test measurement data via the network to a location remote from the subject (fig. 1, part 52 & 54 and col. 11, line 65 to col. 12, line 15), providing a server at a remote location (fig. 2, part 54), processing the measurement data at the central server to produce processed data (col. 12, lines 16-26), downloading the processed data from the server to the apparatus (col. 12, lines 26-28), and displaying the information (figs. 5-10 and col. 19, lines 52-61).

Brown (US 5,307,263) teaches the test apparatus having access to the network, but does not specify the network being an Internet. Brown et al (US 5,879,163) teaches a patient health monitoring system that communicates raw data to a remote server by Internet (col. 6, lines 49-54). It would have been obvious to one of ordinary skill in the

art, at the time of the invention, to modify Brown (US 5,307,263), so that data is communicated via Internet as taught by Brown et al (US 5,879,163), so as to be able to communicate data through a common medium for cost efficiency.

With reference to claims 5-7, Brown (US 5,307,263) teaches a second apparatus being used to interact with the server (fig. 2, pad 62).

With reference to claims 8 and 9, Brown (US 5,307,263) teaches a database storing processed data (col. 12, lines 53-55).

With reference to claim 10, Brown (US 5,307,263) teaches data being stored at different times (col. 1, lines 52-56).

With reference to claims 18-20, Brown (US 5,307,263) teaches providing multimedia means at the apparatus and using the interface to communicate test instructions to the subject (col. 8, lines 63+).

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 11-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown in view of Halpern.

Brown teaches automatically processing data obtained from the subject and transmitting the data to the second apparatus, but does not specify analyzing the data

historically. Halpern et al teaches using an analysis program to analyze stored historical data obtained from a patient (col. 11 , lines 21-26). Since Brown and Halpern et al are both within the art of remote patient monitoring by network and because analyzing historical data is well known in the art, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to modify Brown, so that historical analysis is applied to collected data, as taught by Halpern et al, so as to derive the benefit of trend analysis of recorded data.

### ***Response to Arguments***

5. Applicant's arguments filed May 24, 2004 have been fully considered but they are not persuasive. With regard to argument about test sensors on the top of page 3, applicant's attention should be drawn to column 15, lines 33-34. Brown clearly teaches sensors being used to record medical information used for testing purposes.

With regard to remarks on the third paragraph of page 3, the office action did not mention that the data management unit 10 was a network, but rather stated that unit 10 is a device having access to the network.

With regard to arguments of claim 10, Brown teaches data being stored at different times (col. 1, lines 52+).

In response to applicant's argument that Brown (US 5,879,163) is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir.

1992). In this case, it is well known in the art to transfer information by Internet, which is a form of network communication. Brown happens to be the inventor of the primary reference and one of the inventors for the secondary reference. I believe it would have been obvious to Brown that Internet technology could be incorporated into the health monitoring system (US 5,307,263).

With regard to arguments that Brown does not teach a multimedia device, applicant's attention should be directed to the fact that the "Game Boy" is a device that conveys both audio and visual communication means to the user. Therefore it meets the definition of "multimedia".

In response to arguments that Halpern does not teach providing historical data and using an analysis program, applicant's attention should be drawn to column 8, lines 51+ and column 11, lines 20-25. Halpern teaches that the use of analysis programs and the use of historical data for a patient monitoring system is well known in the art.

### ***Conclusion***

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any


extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul Kim whose telephone number is 571-272-2217. The examiner can normally be reached on Monday-Thursday 10:00-6:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marc Hoff can be reached on 571-272-2216. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9306 for regular communications and for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0956.

PK  
July 28, 2004

  
MARC S. HOFF  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2800